Supreme Court, U.S.
FILED
991275 DEC 2 1 1999
OFFICE OF THE CLERK

No.

In the
Supreme Court of the United States

ESTATE OF DOLORES B. SCHEIDLY

V

TRAVELERS INSURANCE COMPANY

Respondent

JOSEPH M. SCHEIDLY

Petitioner

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

Joseph M. Scheidly, Pro se
606 Dutton Street
Aston , Pa. 19014
(610) 485-4274

27pb

QUESTIONS PRESENTED FOR REVIEW

Why did the United States Court of Appeals for the Third Circuit Affirm District Courts decision using a complaint submitted by the defendants in relitigation of insurance benefits that was not properly served ?

Why did the United States Court of Appeals for the Third Circuit affirm Districts Courts decision for failure to hear Plaintiffs "Motion for Summary Judgment" properly served representing a collateral attack on lower courts judgments ?

Why did the United States Court of Appeals for the Third Circuit ignore Fed R. Civ. 12 (a) when the defendant refused To answer the plaintiffs "Motion for Summary Judgment that was properly served ?

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Plaintiff Joseph M. Scheidly authorized substitute for his wife Dolores B. Scheidly by United States Court of Appeals for the 3rd Circuit order of June 1, 1999 , requests that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Third Circuit. (App. A).

OPINIONS BELOW

Opinion of the United States Court of Appeals Third Circuit No. 99-1317 (App. B) Order and memorandum of the United States District Court E.D Pennsylvania No. 99-265 (App. C) As this appeal deals with the judgment the back ground of the case by the District Court has been deleted .

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Third Circuit was entered on September 23, 1999 . the Court of Appeals denied a timely petition for rehearing September 23, 1999 (App. D).

The jurisdiction of this Court is invoked under 28 U.S.C. sec. 12

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Rules of Civil Procedure 3,4,and 12 (a) were distorted by the decisions of the United States Court of Appeals for the Third Circuit .

FEDERAL RULES OF CIVIL PROCEDURE 3,4,AND 12(A)

Federal Rule of Civil 3 was distorted when a complaint that was not properly served was used in a decision against Scheidly by the District Court in the case of Dolores B. Scheidly v. Travelers Insurance Company that this appeal represents.

Federal Rule of Civil Procedure 4 was distorted when the plaintiff Scheidlys " Motion for Summary Judgment" properly served under the Federal Rule of Civil procedure 4 was ignored .

Federal Rule of Civil Procedure 12 (a) was distorted when Traveler Insurance Company ignored to answer the summons served upon them for a Complaint in "Motion for Summary Judgment" .

STATEMENT OF CASE

The fundamental question in this appeal is ? did the court have the right to ignore Shceidlys "Motion For Summary Judgment" Properly served and substitute a complaint that was not properly served .

January 15, 1999 Dolores B. Scheidly (Scheidly) Pursuant to Fed. R. Civ. P. 3 filed a complaint /plea for cause of action in a "Motion for Summary Judgment".

January 19,1999 the District Court Entered Scheidlys complaint .

January 21, 1999 Scheidly mailed Travelers Insurance Company (Travelers) a courtesy copy of the January 15,1999 complaint /plea for cause of action ,**unaccompanied** with a summons or certificate of service . (App. E)

While Scheidly was preparing her service of process she received a court order dated January 21, 1999 from the District Court advising that her "Motion for Summary Judgment" was being dismissed without prejudice. In a Phone call to the Clerks office the deputy Clerk Zachery Robinson advised Scheidly that as soon as Travelers was properly served , the order of January 21, 1999 would be dismissed .

On January 23, 1999 Scheidly served Travelers with a "Motion for Summary Judgment" accompanied with summons and certificate of service and copied to Linda Lewandowski in the Clerks Office of the United States District Court E.D. Pennsylvania . (Appendix F- H)

On February 11, 1999 Travelers responded with a "Motion to Dismiss Complaint" alleging that the January 15, 1999 complaint used in their "Motion to Dismiss Complaint" was properly filed under Fed. R .Civ. 3.
(App. H)

On 16, 1999 Scheidly replied to Travelers response of February11, 1999 with a "Memorandum of law" identifying that the complaint used in Travelers "Motion to Dismiss Complaint" was without more and not sufficient to satisfy service of complaint under Fed R. Civ. P. 4 (d) (1) as suggested in the case of ***Defazio v. Delta Air Lines 849 , F.Supp 98*** ,quoting the First Circuit in the case ***Precision Etchings and Findings Inc. v. LGP Ltd 953,F.2d. , 24*** .Also in this same memorandum Scheidly requested Default Judgment because Travelers ignored Scheidlys "Motion of Summary Judgment" properly served upon them pursuant to Fed. R. Civ. 4 , as a result this "Memorandum of law received no response.

ARGUMENT AND REASON TO GRANT A WRIT OF CERTIORARI

Scheidly raises no argument that Travelers has accused her of filing a complaint under Fed.R.Civ.P. 3, because she did to invoke action in the United States District Court E.D. Pennsylvania. What Scheidly argues is that this same complaint used in Travelers "Motion to Dismiss Complaint" is not supported with a summons or certificate of service , Fed R. Civ. P. 4 makes it clear that the time to answer is keyed to the time of service and not the filling of the complaint –***31 F.R.D. 181 Bell v. Hosse , D.C. Tenn. 1962 ,*** advises that the court has no power over the defendant until proper service has been made.

Scheidly also argues she properly served Travelers a "Motion for Summary Judgment" under Fed. R. Civ. P. 4 that was deliberately ignored by Travelers representing a uncontested motion and a judgment in Scheidlys favor for Travelers Failure to plea .

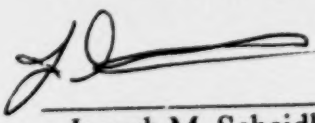
Scheidly again argues that when Travelers deliberately ignored Scheidlys "Motion for Summary Judgment" ,Properly served , suggests a Culpable act by Travelers and their attorneys outlined in the decision of the case ***Direct Mail Specialists v. Eclat Computerized Technologies 840, F.2d, 685.***

CONCLUSION

Under the circumstances of this appeal ; especially that part deliberately denying to be heard the Plaintiff Scheidlys "Motion for Summary Judgment" properly served , is an Arbitrary and Capricious act in violation to Scheidly rights under the 5th and 14th Amendments to the United States

Constitution for a fair procedural Due Process, Accordingly The decision of the United States Court of Appeals for the Third Circuit should be vacated and the matter rescheduled for another hearing ,representing the complained of by the plaintiff Scheidly in her "Motion for Summary Judgment". For the Abuse of Process Malicious use of process denial of the Constitutional right to Due Process and the Equal Protection of Pennsylvania law.

Respectfully Submitted
In memory of my wife



Joseph M. Scheidly Pro se
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APPENDIX

APPENDIX A-- MOTION TO SUBSTITUE THE DECEASED APPELLANT WTITH HER HUSBAND JOSEPH M. SCHEIDLY MOTION GRANTED JUNE 1 , 1999

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

May17,1999
A65

No. 99-1317

Dolores B. Scheidly
Appellant

v.

Travelers Ins. Co.

Present : LEWIS AND RENDELL , CIRCUIT JUDGES

Motion by Appellants Husband to be substituted party because Appellant is deceased as 5/11/99

Phyliss Ruffin 595-1895

Order

The foregoing motion is granted

By the Court,
S/ illegible

Dated June 1, 1999

Circuit Judge

APPENDIX "B"—JUDGEMENT OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DATED AND FILED AUGUST 20, 1999

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 99-1317

DOLORES B. SCHEIDLY

v.

TRAVELERS INSURANCE COMPANY

Joseph M, Scheidly

Appellant

On the appeal from the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civ No. 99-00265)
Before District Judge : Honorable Ronald L. Buckwalter

Submitted Under the Third Circuit LAR 27.4 and I.O. P. 10.6

July 29, 1999

Appendix B

Before: MANSEN , GREENBERG and MCKEE Circuit Judges.

JUDGMENT

This case came to be heard on the record from the United States District Court for the Eastern District of Pennsylvania pursuant and was submitted to Third Circuit LAR 27.4 and I.O.P. 10.6 on consideration whereof , it is now here ORDERED AND ADJUDGED by this Court that the judgment of the District Court entered March 16, 1999 be the same is hereby affirmed .Costs taxed against the appellant .All the above in accordance with the opinion of this Court .

ATTEST

S / Illegible

Clerk

DATED AUG. 20,1999

APPENDIX "C" ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA DATED AND FILED MARCH 15,1999

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DOLORES B. SCHEIDLY	:	
	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	No. 99-265
	:	
TTRAVELERS INSURANCE COMPANY	:	
	:	
Defendant	:	

ORDER

AND NOW THIS 15 day of March ,1999 upon consideration of defendants motion to dismiss as converted to one for summary judgment (Docket No. 5) and plaintiffs response thereto (Docket Nos 1,2 and 6) it is hereby **ORDERED** that the Motion is **GRANTED** . Judgment is entered in favor of Defendant , Travelers Insurance Company and against Plaintiff , Dolores Scheidly . The Clerk of the Court shall Mark this Case Closed .

MEMORANDUM

Buckwalter, J. March 15 1999

Appendix C

Plaintiff Dolores Scheidly filed a pro se complaint on January 19, 1999 , merely listing claims for malicious use process , malicious abuse of process and violation of due process and equal protection .Plaintiff simultaneously moved for summary judgment ,identifying for the first time, factual allegations for the claims that were sequentially listed in her complaint .On January 21, 1999 this Court Dismissed ,without prejudice "Plaintiffs Motion For Summary Judgment" for failure to comply with Fed R.Civ. 56(a) . Defendant subsequently filed the present Motion to dismiss Plaintiffs complaint pursuant to Rule 12 (b)(6) .For purposes of deciding the motion , the Court will treat the materials submitted by the plaintiff in support her Summary Judgment Motion as part of her complaint .

By the Court

S/ Illegible

Ronald L. Buckwalter

APPENDIX "D"---ORDER OF THE UNITED STATES COURT OF APPEALS FOR THIRD CIRCUIT DENYING PETITION FOR REHEARING DATED SEPTEMBER 23,1999

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 99-1317

DOLORES B. SCHEIDLY

V.

TRAVELERS INSURANCE COMPANY

Joseph M. Scheidly

Appellant

On appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civ. No. 99-00265)

SUR PETITION FOR REHEARING

BEFORE: BECKER Chief Judge , and SLOVITER, MANSMANN, GREENBERG , SCRICA , NYGARRD , ALITO , ROTH , MCKEE , and RENDELL , Circuit Judges

BEST AVAILABLE COPY

judges who participated in the decision of this court and to all other available circuit of the court in regular active service and no judge concurred in the decision having asked for rehearing and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied .

BY THE COURT:

S/ Illegible

Circuit Judge

DATED SEPT. 23, 1999

APPENDIX E---COURTESY LETTER OF JANUARY 21, 1999 WITH ATTACHED COMPLAINT OF JANUARY 15,1999 WITHOUT SERVICE TO INVOKE ACTION IN THE DISTRICT COURT

Dolores B. Scheidly v. Travelers Insurance Company

Dear Sir, Madam;

Please excuse the delay , by billing error ,a copy of the attached complaint and track designation record form received in the United States District Court , 1/19/19

Sincerely,
S/deceased
Dolores B. Scheidly

CC: Clerks Office
United States District Court
E.D. Pennsylvania

ATTACHED COMPLAINT

IN THE UNITED STATES DISTRICT COURT FOR THE EASTER DISTRICT OF PENNSYLVANIA

Dolores B. Scheidly Pro se 606 Dutton Street Aston , Pa. 19014	:	**No Civil Action No.**
vs.	:	
Travelers Insurance Company 1Tower Square Hartford , Conn.	:	Defendant

Appendix E

COMPLAINT

Plaintiff Dolores B. Scheidly files the following complaint in a Motion for Summary Judgment rule 56(a), against Travelers Insurance Company .

FOR THE MALICIOUS USE OF PROCESS , ABUSE OF PROCESS , DENIAL OF THE CONSTITUTIONAL RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF LAW .

1/15/99
deceased
Dolores B. Scheidly Pro se
S/ on file available on request

APPENDEX F---CERTIFICATION OF SERVICE BY DOLORES B. SCHEIDLY FOR A "MOTION FOR SUMMARY JUDGEMENT" AS A COLLATERAL ATTACK ON LOWER COURTS DECISIONS

IN THE UNITED STATES DISTRICT COURT
E. D. PENNSYLVANIA

CIVIL ACTION NO. 99-265

DOLORES B. SCHEIDLY
Plaintiff Pro se

v.

TRAVELERS INSURANCE COMPANY
Defendant

CERTIFICATE OF SERVICE

I Dolores B. Scheidly plaintiff Pro se , certify that I have served a correct copy of plaintiffs brief for motion of summary judgment and a copy of summons , in a civil action in the United States District Court E . D. Pennsylvania by certified mail Z 088 041 441 to Travelers Insurance Company and as courtesy by first class mail to the Honorable Judge Cronin and the Honorable Judge Battle in the court of Common Pleas Delaware County Pa.

Consumer Affairs
Travelers Insurance Company
1 Tower Square

Appendix F

Hartford, Conn. 06183

The Honorable Judge Battle
Court of Common Pleas
Delaware County Court house
Media, Pa. 19063

The Honorable Judge Cronin
Court of Common Pleas
Delaware County Courthouse
Media , Pa. 19063

DATED 1-23-99

deceased

Dolores B. Scheidly Pro se

S/ on original copy
Available on request

APPENDIX G--- COVER PAGE AND PAGE ONE OF PLAINTIFFS MOTION FOR SUMMARY JUDGMENT OUTLINING A COLLATERAL ATTACK ON LOWER COURTS DECISIONS AND THE DEFENDANTS LIABILIABILITY

COVER PAGE

IN THE UNITED STATES DISTRICT COURT
E.D. PENNSYLVANIA

NO.

DOLORES B. SCHEIDLY
Plaintiff

vs.

TRAVELERS INSURANCE COMPANY
Defendant

MOTION FOR SUMMARY JUDGMENT

FOR THE MALICIOUS USE OF PROCESS ,ABUSE OF PROCESS , DENIAL OF THE CONSTITUTIONAL RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF PEENNSYLVANIA LAW .

Of the decision in Delaware County Court of Common Pleas March 26,1996 , 94-1283 ----Affirmed in Pennsylvania Superior Court February 12,1997 ----And

denied in Pennsylvania Supreme Court August 8, 1997 No. 183- 1987----Reconsideration denied in Pennsylvania Supreme Court February 5, 1998 No. Alloc. Dkt. 1987

PAGE ONE

Dolores B. Scheidly
606 Dutton the St.
Aston Pa. 19014
(610) 485-4274

FILED PRO SE BY THE PLAINTIFF
DOLORES B. SCHEIDLY

IN THE UNITED STATES DISTRICT COURT
E.D. PENNSYLVANIA

Dolores B. Scheidly	:	Plaintiff Pro se
	:	
vs	:	
	:	
Travelers Insurance Company	:	Defendant

FOR THE MALICIOUS USE OF PROCESS , ABUSE OF PROCESS , DENIAL OF THE CONSTITUTIONAL RIGHT TO DUE PROCESS AND THE EQUAL PROTEDTION OF PENNSYLVANIA LAW

Plaintiff Dolores B. Scheidly pursuant to provisions of rules of 56 (a) of the Federal Rules of Civil Procedure moves

that the court enter a Summary Judgment interlocutory, in character , declaring that the Defendant as a matter of law is, liable to the plaintiff for the injuries complained of , leaving only the issue of the monetary amount of plaintiffs damages to be determined and in support therefore avers the following

This present Motion for Summary Judgment involves a decision in the Delaware County Court of Common pleas No. 4-12389 for the denial of a petition by Dolores Scheidly , to vacate an illegal arbitration award of September 19, 1994 and a counter petition By Travelers Insurance Company that was granted to confirm the March 17, 1994 award belonging to the indispensable party and contrary to the Pennsylvania Uniform Arbitration Act.

Respectfully submitted by

S/ deceased

Dolores B. Scheidly

Signed copy on file

APPENDIX H-----FIRST PAGE OF TRAVELERS RESPONSE BRIEF IN A "MOTION TO DISMISS COMPLAINT" IN RELITIGATION OF INSURANCE BENEFITS

SWARTZ CAMPBELL & DERWEILER
BY: ANDREW J REILY , ESQUIRE
JAMES D. CELLA , ESQUIRE
I D. Nos. 50076 / 64907
115 North Jackson Street
Media , Pa. 19063
(610) 566- 9222

ATTORNEYS FOR THE DEFENDANT

IN THE UNITED STATES DISTRICT COURT
E.D PENNSYLVANIA

DOLORES SCHEIDLY	:	
	:	No. 99-265
v.	:	
	:	
TRAVELERS INSURANCE COMPANY	:	

COVER PAGE FOR

MOTION TO DISMISS COMPLAINT

The defendant Travelers Insurance Company (Travelers) by its counsel Swartz Campbell & Detweiler hereby files this Motion to dismiss and avers.

The present action purports to seek damages for the malicious use of process, the abuse of process and the denial of the Constitutional right to equal protection of law arising out of the litigation of an uninsured motorists action which

arose out of a vehicle accident occurring in February of 1991 a true and correct copy of the complaint (also identified as a Motion for summary Judgment) is hereto attached and marked as Exhibit "A" [1]

---

1 The document filed by the plaintiff would appear to be improper under Fed R.C. P.3 . However, for purpose of this Motion, the defendant is treating the first filing as a complaint properly filed under the rules of Civil Procedure rather than a "Motion for summary Judgment"

END PAGE

Respectfully submitted
Swartz, Campbell & Detweiler

S/ illegable

Andrew J. Reilly, Esquire
James D. Cella , Esquire
Attorneys for DEfendant

Dated 2/11/ 99

Supreme Court, U.S.
FILED
FEB 28 2000
CLERK

(2)

No. 99-1275

IN THE

Supreme Court of the United States

JOSEPH M. SCHEIDLY,

Petitioner,

v.

TRAVELERS INSURANCE COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

JAMES D. CELLA
Counsel of Record
SWARTZ, CAMPBELL & DETWEILER
Attorneys for Respondent
115 North Jackson Street
Media, Pennsylvania 19063
(610) 566-9222

158123

Counsel Press LLC
(800) 274-3321 • (800) 359-6859

STATEMENT PURSUANT TO RULE 29.6

The petition accurately lists the parties to the proceeding.

The following are parents of respondent, Travelers Insurance Company: Citigroup; Travelers Indemnity Corporation; Associated Medicine Companies, Inc.; PFS Service, Inc.; Travelers Insurance Group, Inc., and Travelers Property Casualty Corporation.

Citigroup and the Travelers Property Casualty Corporation hold ten percent (10%) or more of Travelers Indemnity Company's stock.

STATEMENT OF THE CASE

This Petition is one seeking this Court's review of the Third Circuit's opinion affirming the Order of the United States District Court for the Eastern District of Pennsylvania which dismissed the action filed by the plaintiff. The underlying action involved a claim seeking recovery for damages for the alleged malicious use of process, abuse of process, denial of the constitutional right to due process and the denial of the constitutional right to equal protection of the laws arising out of the litigation of an uninsured motorist action which arose out of a motor vehicle accident which occurred in February, 1991. The plaintiff, Dolores Scheidly (since deceased) was the wife of the Petitioner, Joseph Scheidly. Mr. Scheidly was injured in the motor vehicle accident. Mrs. Scheidly asserted a claim for loss of consortium. At the time of the accident Mrs. Scheidly and her husband maintained an automobile insurance policy with the respondent, Travelers. An arbitration hearing was held on both Mr. and Mrs. Scheidly's claims following which the arbitrators issued an award in favor of the plaintiff, Joseph Scheidly and against Travelers in the amount of $325,000. The award did not specifically mention Mrs. Scheidly's claim for loss of consortium.

Following the award, Travelers sent a release to Mr. Scheidly's attorney for his signature. After receiving the executed release, a check was issued from Travelers to Mr. Scheidly and his attorneys in the amount of $325,000. Mrs. Scheidly requested reconsideration for a loss of consortium claim. The Panel of Arbitrators reconvened and the arbitrators confirmed that the award of March 17, 1994 for $325,000 covered *all* outstanding claims, including the derivative claim of loss of consortium. After exhausting state

court remedies with regard to her claims that the arbitrators ignored her claim for loss of consortium, Mrs. Scheidly sought to collaterally attack the state court judgments by filing a Complaint in the United States District Court for the Eastern District of Pennsylvania.

There is no cause for this Court's review of the Petitioner's contentions which have been rejected by the District Court and the Third Circuit. Simply put, the decision of the Third Circuit is not in conflict with the decision of another United States Court of Appeals on the same matter, nor has the Third Circuit decided an important question of Federal law that has not been, but should be, settled by this Court. Finally, the Third Circuit did not decide an important Federal question in a way that conflicts with relevant decisions of this Honorable Court.

Moreover, the Petition misrepresents how this case came before the District Court. The petitioners portray the District Court as having ignored their "Motion for Summary Judgment" properly served, substituting a Complaint that was not properly served. The Complaint and Motion for Summary Judgment were simultaneously filed and served upon Travelers. In response to the filings of the Complaint and Motion for Summary Judgment, Travelers filed the motion to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(6). The District Court intentionally treated the materials submitted by the plaintiff in support of the Motion for Summary Judgment as part of the Complaint. The Court did *not* ignore the petitioner's filing of the Motion for Summary Judgment. Rather, the Court incorporated the Motion for Summary Judgment into the Complaint for purposes of deciding the 12(b)(6) motion of Travelers.

Neither the District Court nor the Third Circuit ignored the petitioner's Motion for Summary Judgment. Rather, the Motion for Summary was incorporated into the Complaint for purposes of reviewing and deciding Travelers' Motion to Dismiss. The Petition does not assert that the District Court or Third Circuit incorrectly decided the Motion to Dismiss.[1] Rather, the Petition simply asserts that the Court ignored the "Motion for Summary Judgment". This is not the case.

REASONS FOR DENYING THE WRIT

The claim that the Courts below ignored the filing of the Motion for Summary Judgment does not warrant review by this Court. The decisions below are plainly correct applications of settled law and no conflict among the circuits is even alleged. Simply put, there is nothing contained within the Petition which would warrant review by this Honorable Court of the decisions below.

---

1. Moreover, the District Court and the Third Circuit properly dismissed the Complaint based upon the doctrines of collateral estoppel and *res judicata*.

CONCLUSION

For the foregoing reasons, the respondent, Travelers Insurance Company, respectfully requests that this Honorable Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

JAMES D. CELLA
Counsel of Record
SWARTZ, CAMPBELL & DETWEILER
Attorneys for Respondent
115 North Jackson Street
Media, Pennsylvania 19063
(610) 566-9222

APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DATED AND FILED AUGUST 20, 1999

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 99-1317

DOLORES B. SCHEIDLY

v.

TRAVELERS INSURANCE COMPANY

Joseph M. Scheidly,

Appellant[1]

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civ. No. 99-cv-00265)
District Judge: Honorable Ronald L. Buckwalter

Submitted Under Third Circuit LAR 27.4 and I.O.P. 10.6
July 29, 1999

Before: MANSMANN, GREENBERG, AND MCKEE,
CIRCUIT JUDGES

(Filed AUG 20 1999)

---

1. Pursuant to the Court's Order dated 6/1/99.

Appendix A

OPINION

PER CURIAM

Dolores B. Scheidly, who is now deceased and for whom her husband, Joseph M. Scheidly, has been substituted, appeals from the District Court's order granting the Travelers Insurance Company's motion to dismiss, which the court construed as a motion for summary judgment. Before us is a document filed by Scheidly titled "permission to appeal for the abuse of discretion," which we shall construe as a motion for summary reversal of the District Court's order. For the following reasons we shall instead summarily affirm the District Court's order.

I

In January 1999 Scheidly filed a complaint "for the malicious use of process, abuse of process, denial of the constitutional right to due process and equal protection of Pennsylvania law" against Travelers. The complaint provides no details; instead, these can be found in the motion for summary judgment which she filed on the same day. It appears that in 1991 Joseph Scheidly was injured in an accident. The Scheidlys filed a claim with Travelers for uninsured motorist benefits, Joseph claiming personal injuries and Dolores claiming loss of consortium. The dispute between the parties went to arbitration. In March 1994 the arbitrators found in favor of Joseph Scheidly against Travelers in the amount of $325,000, issuing the award in his name only. After Travelers paid Joseph, and after Joseph signed a release, Dolores resubmitted her claim for loss of

consortium, believing that the arbitrators had overlooked her claim. The panel of arbitrators reconvened and confirmed the original award of $325,000, but added that the award covered all outstanding claims, including Dolores' derivative claim.

In October 1994 Dolores petitioned the Court of Common Pleas for Delaware County to vacate the award. Travelers cross-petitioned to confirm the award. The court ordered the board of arbitrators to clarify the original award with regard to Dolores' claim for loss of consortium. They did so, explaining that the award was for all claims against Travelers, including Dolores'. In March 1996 the court denied Dolores' petition and granted Travelers'. On appeal the Superior Court of Pennsylvania affirmed; the Pennsylvania Supreme Court denied her petition for allowance of appeal. This action followed. Dolores contends that the proceedings before the arbitrators and in state court violated her due process and equal protection rights and amounted to a misuse and abuse of process.

Arguing that Dolores' claims are barred by *res judicata*, Travelers filed a motion to dismiss, which the District Court construed as a motion for summary judgment because Travelers relied on matters outside the pleadings. The District Court agreed that the complaint is barred by *res judicata*: Dolores is again litigating her rights to the same uninsured motorist benefits for the same injury, the cause of action is the same, the parties are the same, and the parties' capacities are the same. The court also found that the action is barred by collateral estoppel because the same legal issue had been conclusively determined in a prior action in state court.

Accordingly, the District Court granted Travelers' motion. Dolores filed a motion for reconsideration, which was denied. This appeal followed.

II

We agree with the District Court that Dolores' complaint is barred by the doctrines of *res judicata* and collateral estoppel. We note that her complaint may also be barred by the so-called *Rooker-Feldman* doctrine, which precludes a federal action if, as would appear to be the case here, the relief requested in the federal action would effectively reverse a prior state decision or void its ruling. *See Whiteford v. Reed*, 155 F.3d 671, 674 (3d Cir. 1998). Accordingly, we shall affirm the District Court's order.

APPENDIX B — MEMORANDUM AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA DATED AND FILED MARCH 15, 1999

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION NO. 99-265

DOLORES SCHEIDLY,

Plaintiff,

v.

TRAVELERS INSURANCE COMPANY,

Defendant.

MEMORANDUM

Buckwalter, J. March 15, 1999

Plaintiff Dolores Scheidly filed a *pro se* complaint on January 19, 1999, merely listing claims of malicious use of process, malicious abuse of process, and violations of due process and equal protection. Plaintiff simultaneously moved for summary judgment, identifying for the first time, factual allegations for the claims that were sequentially listed in her complaint. On January 21, 1999, this Court dismissed, without prejudice, Plaintiff's summary judgment motion for failure to comply with Fed. R. Civ. P. 56(a). Defendant subsequently filed the present motion to dismiss Plaintiff's

complaint pursuant to Rule 12(b)(6). For purposes of deciding the motion, the Court will treat the materials submitted by Plaintiff in support of her summary judgment motion as part of her complaint.

I. BACKGROUND

This suit arises out of litigation over insurance coverage for an automobile accident that occurred on February 5, 1991. Plaintiff's husband, Joseph Scheidly, was injured in that accident, and Plaintiff incurred a loss of consortium. At the time of the accident, Plaintiff and her husband maintained an automobile insurance policy with Defendant Travelers Insurance Company ("Travelers"). Mr. and Mrs. Scheidly filed a claim with Defendant for uninsured motorist benefits. Mr. Scheidly claimed personal injuries, and Plaintiff claimed loss of consortium. An arbitration hearing was held on both of their claims, following which the board of arbitrators issued an award on March 17, 1994 in favor of Mr. Scheidly and against Travelers in the amount of $325,000.00. The award was issued in Mr. Scheidly's name only.

Following the award, Defendant sent a release to Mr. Scheidly for his signature. After the release was executed, Defendant issued a check to Mr. Scheidly and his attorneys in the amount of $325,000.00. On July 25, 1994, Plaintiff resubmitted her claim with Travelers for loss of consortium as she believed that, upon review of her husband's award, the check, and the release, her claim was ignored by the panel of arbitrators. The panel of arbitrators reconvened as a result of Plaintiff's correspondence with Travelers and confirmed the original award of $325,000.00. The arbitrators stated,

however, that the award covered all outstanding claims, including Plaintiff's derivative claim.

On October 17, 1994, Plaintiff petitioned the Court of Common Pleas of Delaware County to vacate the award of the arbitrators. Defendant cross-petitioned to confirm the award. The court issued an order directing the board of arbitrators to clarify the original award of March 17, 1994 with regard to Plaintiff's claim for loss of consortium. The arbitrators issued a clarification indicating that the original award considered all claims including Plaintiff's claim. On March 25, 1996, the Court of Common Pleas entered an order denying Plaintiff's petition to vacate and granting Traveler's petition to confirm the award. Plaintiff subsequently filed a timely appeal to the Superior Court of Pennsylvania. In a memorandum opinion, the Superior Court affirmed the order of the trial court. Plaintiff thereafter filed a petition for allowance of appeal to the Supreme Court, which was denied. Plaintiff then filed a petition for reconsideration of the denial of the allowance of appeal, which was also denied.

II. DISCUSSION

Defendant moves to dismiss Plaintiff's complaint for failure to state claims upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). As Defendant relies on matters outside the pleadings and provides supporting documentation, the Court will treat Defendant's motion as one for summary judgment. *See* Fed. R. Civ. P. 12(b). Furthermore, as Plaintiff has indicated in her response that she desires such a result, and all pertinent material is presently before the Court, Defendant's motion will be disposed of as provided in Rule 56.

Appendix B

A. *Standard of Review*

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party has the burden of demonstrating the absence of any genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A factual dispute is "material" if it might affect the outcome of the case under the governing substantive law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Additionally, an issue is "genuine" "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*

If the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving party to "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). In doing so, the non-moving party must "do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). If the evidence of the non-moving party is "merely colorable," or is "not significantly probative," summary judgment may be granted. *Anderson*, 477 U.S. at 249-50.

In the instant complaint, Plaintiff claims that the procedure in the arbitration and state court proceedings violated her due process and equal protection rights, and was a misuse and abuse of process. Specifically, she claims that

the arbitrators violated the Uniform Arbitration Act, 42 Pa. Cons. Stat. Ann. § 7311, in confirming their original award and in announcing that the award included Plaintiff's claim for loss of consortium. Defendant argues, however, that because the same issues in this case have already been litigated, or could have been litigated, in prior state proceedings, the doctrines of *res judicata* and collateral estoppel bar Plaintiff's claims and entitle Defendant to summary judgment.

Res judicata and collateral estoppel relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication. *See Allen v. McCurry*, 449 U.S. 90, 94 (1980). In addition, these doctrines "promote the comity between state and federal courts that has been recognized as a bulwark of the federal system." *Id.* at 96. In deciding whether Plaintiff's claims are barred by her prior litigation in the Pennsylvania courts, this Court must apply Pennsylvania law. *See McNasby v. Crown, Cork & Seal Co.*, 888 F.2d 270, 276 (3d Cir. 1989), *cert. denied*, 494 U.S. 1066 (1990).

B. *Res Judicata*

In order to determine whether Plaintiff's claims are barred by the doctrine of *res judicata*, it is necessary to examine the conditions that must be present for the doctrine to prevail. Pennsylvania common law has a four-prong requirement that must be met in order for a second action to be precluded. *See e.g., Brame v. Buckingham Township*, No. CIV.A. 96-5821, 1997 WL 288673, *6 (E.D. Pa. May

23, 1997). The two actions must share an identity of the "(1) thing sued on; (2) cause of action; (3) persons and parties to the action; and (4) quality or capacity of the parties suing or sued." *Id.* (citing *McNasby*, 888 F.2d at 276).

All four elements are met here. First, Plaintiff is once again litigating over her rights to uninsured motorist benefits. Because the same occurrence underlies this suit and her actions in state court, the first prerequisite of *res judicata* — identity of subject matter — is met.

The second element — identity of the cause of action — is also satisfied. To determine whether causes of action are identical for purposes of *res judicata*, there are four criteria, including whether (1) the acts complained of and the demand for relief are the same; (2) the theory of recovery is the same; (3) the witnesses and documents necessary at trial are the same; and (4) the material facts alleged are the same. *See O'Leary v. Liberty Mutual Insurance Co.*, 923 F.2d 1062, 1065 (3d Cir. 1991). Here, all of these criteria are met. The acts complained of and the demand for relief are the same: damages for loss of consortium due to misuse and abuse of process. Additionally, in the state court proceedings, Plaintiff had sought redress for the abuse and/or misuse of the arbitration process by the arbitrators and Defendant. The theory of recovery is the same in the instant action as Plaintiff proposes that the process below was misused and/or abused and violated her constitutional rights. Moreover, the witnesses and documents necessary at trial are the same and the material facts alleged regarding the misuse and/or abuse of process are the same. Plaintiff continues to complain, as she did at the trial court level and

through the appellate courts of Pennsylvania, that the uninsured motorist hearing and the trial court proceeding with respect to Defendant's petition to vacate the arbitration award were a misuse and abuse of process as well as a violation of her due process and equal protection rights. Thus, the essence of the claims asserted by Plaintiff are similar, if not identical, to the claims brought in federal court.

The third and fourth prerequisites of *res judicata* are clearly met as the parties to the instant action, Dolores Scheidly and Travelers, are the same parties from the prior proceedings, and there is no dispute as to the quality or capacity of the parties suing or being sued.

C. *Collateral Estoppel*

While the Court finds that Plaintiff's claims are barred by *res judicata*, the Court also concludes that collateral estoppel bars the present suit. Under Pennsylvania law, which adopts the requirements of the Restatement (Second) of Judgments, a prior determination of a legal issue is conclusive in a subsequent action between the parties on the same or different claim when: (1) the issue was actually litigated; (2) the issue was determined by a valid and final judgment; and (3) the determination was essential to the judgment. *See e.g.*, *O'Leary*, 923 F.2d at 1067 (citing Restatement (Second) of Judgments § 27 (1982) and *Clark v. Troutman*, 509 Pa. 336, 340 (1985)).

All three requirements for collateral estoppel are satisfied in this case. First, the issues of (1) whether the arbitrators violated the Uniform Arbitration Act in confirming their

original award and in announcing that the award included Plaintiff's claim for loss of consortium and (2) whether Defendant misused or abused process by filing a petition to confirm the award, were "actually litigated." An issue is "actually litigated" when it "is properly raised, by the pleadings or otherwise, and is submitted for determination and is determined." *Id.* at 1066. There is no doubt that these issues were raised by Plaintiff in her appeals to the Pennsylvania courts. There is also no dispute that the issues were submitted for determination, and actually determined, by the state courts through each step of the appeals process. Second, the determination of these issues has now become final and conclusive as Plaintiff has exhausted her appeals through the state system. Finally, it is apparent from the resolution of these issues in the state court proceedings that these issues were essential to the judgments below. Thus, the elements of collateral estoppel have been satisfied.

III. CONCLUSION

For the foregoing reasons, Defendant's motion as converted to one for summary judgment is **GRANTED**. An appropriate order follows.

Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION NO. 99-265

DOLORES SCHEIDLY,

Plaintiff,

v.

TRAVELERS INSURANCE COMPANY,

Defendant.

ORDER

AND NOW this 15 day of March, 1999, upon consideration of Defendant's motion to dismiss as converted to one for summary judgment (Docket No. 5) and Plaintiff's response thereto (Docket Nos. 1, 2, and 6), it is hereby **ORDERED** that the motion is **GRANTED**. Judgment is entered in favor of Defendant, Travelers Insurance Company, and against Plaintiff, Dolores Scheidly. The Clerk of Court shall mark this case **CLOSED**.

BY THE COURT:

s/ Ronald L. Buckwalter
RONALD L. BUCKWALTER, J.

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DENYING PETITION FOR REHEARING DATED SEPTEMBER 23, 1999

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 99-1317

DOLORES B. SCHEIDLY

v.

TRAVELERS INSURANCE COMPANY

Joseph M. Scheidly,

Appellant

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civ. No. 99-00265)

Submitted Under Third Circuit LAR 27.4 and I.O.P. 10.6
July 29, 1999

SUR PETITION FOR REHEARING

BEFORE: BECKER, *Chief Judge*, and SLOVITER, MANSMANN, GREENBERG, SCIRICA, NYGAARD, ALITO, ROTH, MCKEE, and RENDELL, *Circuit Judges*

Appendix C

The petition for rehearing filed by the appellant, Joseph M. Scheidly, in the above captioned matter having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the court in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied.

BY THE COURT:

s/ [illegible]
Circuit Judge

DATED: SEP 23 1999

Supreme Court, U.S.
FILED
MAR - 7 2000
CLERK

(3)

No. 99-1275

In the
Supreme Court of the United States

ESTATE OF DOLORES B. SCHEIDLY

V

TRAVELERS INSURANCE COMPANY

Respondent

JOSEPH M. SCHEIDLY

Petitioner

On Petition for A Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITIONERS REPLY TO RESPONDENTS RESPONSE

Joseph M. Scheidly, Pro se
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4 pp

PETITIONERS REPLY
TO
RESPONDENTS RESPONSE

Travelers Insurance Company (Travelers) has made it clear they are relying on the 3rd Circuit and District Courts Decision that used unambiguous language in re-litigation of an insurance Complaint that was not properly served. Travelers was served by the Plaintiff with a "Motion for Summary Judgment" Appendix (F,G) of the appeal and is clear on its face declaring the denial of a petition in the Delaware County Court of Common pleas , to vacate an illegal arbitration award , a counter petition by Travelers to confirm an arbitration award belong to the indispensable party and contrary to the Pennsylvania Uniform Arbitration Act

Travelers Argues in the statement of their response on page 2 at lines 23,24 & 25 that they filed a Motion to Dismiss the Complaint pursuant to Fed R. Civ P. 12 (b) (6). In construing Travelers Motion to Dismiss the Complaint, see Appendix F of the appeal . The Plaintiff Scheidly finds that Fed. R. Civ . P 12 (b) (6) or its language was never suggested by Travelers in their Motion to Dismiss the Complaint and seems to be a false statement (28 U.S.C sec. 1623) to miss lead this Honorable Court to support a judgment in their favor.

Travelers admits they deliberately ignored Scheidlys "Motion for Summary Judgment", properly served and pursued a Complaint *thaī was not* properly served when they stated in the footnote of their Motion to Dismiss Complaint , Exhibit H of the appeal , That ; "The document filed by the plaintiff would appear to be improper under Fed. R. Civ. P.3 However for the purpose of this Motion , the Defendant is treating the first filling as Complaint properly filed

under the Federal Rules of Civil Procedure rather than a "Motion for Summary Judgment" .

The Complaint referred to by Travelers in their Motion to Dismiss Complaint is the same complaint that was used by Scheidly to invoke action required under Fed R. Civ. P.3 prior to serving Travelers a "Motion for Summary Judgment" Pursuant to Fed. R. Civ. 4 clearly declares that ; Plaintiff Dolores B. Scheidly *files the following complaint in a "Motion for Summary Judgment"* Rule 56 (a) Against Travelers Insurance Company for the Malicious use of Process , Abuse of Process , denial of the Constitutional right to Due Process and the equal protection of law, see page 9a Appendix E of the appeal. And does not suggest a Complaint in re-litigation of insurance benefits as Suggested by Travelers in their Motion to Dismiss Complaint filed in the District Court and later moved to the 3rd Circuit .

Travelers "says nothing" and sets fort no matter of fact for their deliberate denial to refuse to answer a summons served upon them under Fed. R. Civ. 12 (a) for a "Motion for Summary Judgment" ,see Appendix F of the appeal .

CONCLUSION

Under the circumstances of this reply and the appeal ; a writ of Certiorari should be granted and the matter moved to the United States Supreme Court with a judgment considered against Travelers on the merit "For Want of a plea" because Travelers refused to answer the summons served upon them for the "Motion for Summary Judgment" and especially the denial of Scheidlys Constitutional rights under the Fifth and Fourteenth Amendments to the United States Constitution to be heard in a fair Due Process for the "Motion For Summary

Judgment" properly served under Federal Rule of Civil Procedure 4 .

Respectfully Submitted

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